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6 UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
8 OAKLAND DIVISION
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10 PAUL BARRIER,

11 Plaintiff,

12 vs.

13 MICHELLE PRINCE, TOM BROWN,
14 EDWARD BERBERIAN, NICOLE
15 PANTALEO, PAUL HAAKENSEN, NICK
16 CONRAD, RICK BOEHM, DANIEL
17 JENNER, STEPHANIE COMMISTO,
18 BRETT BARTLETT, acting in their official
19 capacity, as State, city or county employees
20 acting by way of State of California law,

21 Defendants.
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Case No: C 11-2818 SBA

ORDER DISMISSING ACTION

26 Plaintiff Paul Barrier filed the instant pro se action pursuant to 42 U.S.C. § 1983
27 against City of Novato police officers Nick Conrad, Rick Boehm, Daniel Jenner, Stephanie
28 Commisto and Brett Bartlett, Marin County District Attorney Edward Berberian, Deputy
District Attorneys Tom Brown, Michelle Prince and Nicole Pantaleo, and Marin County
Superior Court Judge Paul M. Haakenson. Plaintiff also seeks leave to proceed in forma
pauperis ("IFP").

I. BACKGROUND

The instant action stems from Plaintiff's arrest by Novato police officers, and his
subsequent prosecution and conviction by the Marin County District Attorney's Office

1 (“District Attorney”) in connection with weapon and drug charges.¹ Specifically, the
2 District Attorney charged Plaintiff with possession of a short-barreled shotgun, Cal. Pen.
3 Code § 12020(a)(1), possession of a billy club, Id., cultivating marijuana, Cal. Health &
4 Safety Code § 11358, and exhibiting a deadly weapon, Cal. Pen. Code § 417(a)(1).

5 District Attorneys Berberian and Pantaleo offered Plaintiff a plea agreement in
6 which they would dismiss three of the charges if Plaintiff pled guilty to possession of a
7 shotgun. Plaintiff did not accept the offer and the case proceeded to trial at which he
8 represented himself. People v. Barrier, No. SC160215A, Marin Cnty. Sup. Ct.

9 On January 23, 2009, a jury found Plaintiff guilty of possession of a short-barrel
10 shotgun and acquitted him of the other charges. The trial court placed Plaintiff on felony
11 probation for three years, imposed a term of forty-four days in county jail, and ordered a
12 psychological evaluation. Plaintiff appealed the judgment, which was affirmed by the First
13 Appellate District of the California Court of Appeal, Division Five on March 3, 2010.
14 People v. Barrier, No. A124507, 2010 WL 727696 (Cal. Ct. App. Mar. 3, 2010).

15 Plaintiff filed the instant action on June 9, 2011 against the above-referenced
16 Defendants, along with a request to proceed in forma pauperis. Though not entirely clear, it
17 appears that Plaintiff is alleging that his acquittal on three of the four criminal charges filed
18 against him demonstrates that Defendants violated his constitutional rights. Plaintiff avers
19 that he was convicted on the shotgun charge only because Judge Haakenson “would not
20 allow the jury to hear testimony or evidence about how the United States government
21 works.” Compl. at 3. Plaintiff also alleges that Judge Haakenson violated his
22 constitutional rights by referring him to a psychiatrist for an evaluation based on the beliefs
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26 ¹ For background purposes, the Court takes judicial notice of the California Court of
27 Appeal’s unpublished decision on the appeal taken by Plaintiff following his conviction.
28 See People v. Barrier, No. A124507, 2010 WL 727696 (Cal. Ct. App. Mar. 3, 2010). A
district court “‘may take notice of proceedings in other courts, both within and without the
federal judicial system, if those proceedings have a direct relation to matters at issue.’”
Bennett v. Medtronic, Inc., 285 F.3d 801, 803 n.2 (9th Cir. 2002).

1 and opinions presented on his website. Id. at 4.² As relief, Plaintiff seeks to “overturn, or
 2 annul, vacate, or set aside, or reverse, or revoke, or make void, or undo, the jury finding of
 3 guilty of possession of a short barrel shotgun....” Id. at 12. He also seeks the return of his
 4 shotgun, billy club, ammunition and other property seized by the officers, and the
 5 imposition of “real and punitive damages.” Id.

6 **II. LEGAL STANDARD**

7 Under 28 U.S.C. § 1915(e)(2), federal courts are authorized to review IFP claims
 8 prior to service and to dismiss the case at any time if the court determines that: (1) the
 9 allegation of poverty is untrue; (2) the action is frivolous or malicious; (3) the action fails to
 10 state a claim; or (4) the action seeks monetary relief from a defendant who is immune from
 11 such relief.

12 To determine whether an IFP complaint passes muster under § 1915, the Court
 13 applies the same standard applicable to motions to dismiss under Federal Rule of Civil
 14 Procedure 12(b)(6). See Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998).
 15 A complaint may be dismissed under Rule 12(b)(6) for failure to state a claim if the
 16 plaintiff fails to state a cognizable legal theory, or has not alleged sufficient facts to support
 17 a cognizable legal theory. Id. A pleading filed by a pro se plaintiff must be liberally
 18 construed. Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1990).
 19 Nonetheless, the plaintiff must allege “enough facts to state a claim to relief that is
 20 plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). If the
 21 complaint is dismissed, plaintiff generally should be afforded leave to amend unless it is clear
 22 the complaint cannot be saved by amendment. See Cato v. United States, 70 F.3d. 1103,
 23 1106 (9th Cir. 1995).

24 ² Plaintiff includes a print out of his website in his Complaint. Compl. at 56-63.
 25 The website purportedly “exposes the Bohemian Grove” and features a video of the
 26 “annual (July) celebration of a human sacrifice.” Id. at 4. Plaintiff claims the Bohemian
 27 Grove “is a private club of people who celebrate yearly the practice of tossing a child into a
 28 pit of fire...*Celebrating* the crime of child murder!” Id. at 56 (emphasis in original). He
 maintains that “every July, World leaders American presidents, governors, state and federal
 senators, and family members of the largest companies in America get together in Northern
 California to celebrate child murder.” Id. [sic]

1 **III. DISCUSSION**

2 Title 42, United States Code, section 1983 “provides a cause of action for the
3 ‘deprivation of any rights, privileges, or immunities secured by the Constitution and laws’
4 of the United States.’” Wilder v. Virginia Hosp. Ass’n, 496 U.S. 498, 508 (1990) (quoting
5 42 U.S.C. § 1983). Section 1983 is not itself a source of substantive rights, but merely
6 provides a method for vindicating federal rights elsewhere conferred. See Graham v.
7 Connor, 490 U.S. 386, 393-94 (1989). To state a claim under section 1983, a plaintiff must
8 allege two essential elements: (1) that a right secured by the Constitution or laws of the
9 United States was violated and (2) that the alleged violation was committed by a person
10 acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum
11 v. Alameda County, 811 F.2d 1243, 1245 (9th Cir. 1987).

12 An individual who has been convicted of a criminal offense is barred from bringing
13 a civil action which would imply the invalidity of the underlying conviction. See Heck v.
14 Humphrey, 512 U.S. 477, 483-84 (1994). In Heck, the Supreme Court has held that, “in
15 order to recover damages for an allegedly unlawful conviction or imprisonment, or for
16 other harm caused by actions whose unlawfulness would render a conviction or sentence
17 invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on
18 direct appeal, expunged by executive order, declared invalid by a state tribunal authorized
19 to make such determination, or called into question by a federal court’s issuance of a writ
20 of habeas corpus.” 512 U.S. at 486-87. Thus, if a judgment in favor of a plaintiff on his
21 civil rights damages claims necessarily will imply the invalidity of his conviction or
22 sentence, the complaint must be dismissed unless the plaintiff can demonstrate that the
23 conviction or sentence has already been invalidated. Id. at 487.

24 Here, Plaintiff seeks damages for allegedly having been wrongfully convicted for
25 possession of a shotgun. However, Plaintiff’s conviction was affirmed on appeal and there
26 is no allegation or anything in the record showing that said conviction has been set aside.
27 As such, Plaintiff’s claims are barred by Heck. See, e.g., Szajer v. City of Los Angeles,
28 632 F.3d 607, 611 (9th Cir. 2011) (claim alleging an illegal search and seizure of evidence

1 that was used to secure a conviction necessarily implies the invalidity of that conviction);
2 Guerrero v. Gates, 442 F.3d 697, 703 (9th Cir. 2006) (plaintiff's conviction for possession
3 of narcotics barred claims for false arrest and malicious prosecution). Therefore, Plaintiff's
4 claims for damages are dismissed without prejudice under Heck. See Trimble v. City of
5 Santa Rosa, 49 F.3d 583, 585 (9th Cir.1995) (finding that an action barred by Heck has not
6 yet accrued and thus, must be dismissed without prejudice so that the plaintiff may reassert
7 his § 1983 claims if he ever succeeds in invalidating the underlying conviction or
8 sentence).³

9 Finally, if Plaintiff wishes to challenge his conviction and/or sentence, a petition for
10 writ of habeas corpus is the exclusive method by which he may challenge a state court
11 conviction in this Court. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). Before he may
12 file a federal petition, however, Plaintiff must exhaust state judicial remedies, either on
13 direct appeal or through collateral proceedings, by presenting the highest state court
14 available with a fair opportunity to rule on the merits of each and every issue he seeks to
15 raise in federal court. See 28 U.S.C. § 2254(b)(1)(A),(c); Duckworth v. Serrano, 454 U.S.
16 1, 3 (1981).

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24 ³ The Court also notes that Judge Haakenson and the District Attorneys are
25 absolutely immune from liability based on their respective roles in trying and prosecuting
26 the Plaintiff. See Ashelman v. Pope, 793 F.2d 1072, 1075 (9th Cir. 1986) ("Judges and
27 those performing judge-like functions are absolutely immune from damage liability for acts
28 performed in their official capacities."); see also Imbler v. Pachtman, 424 U.S. 409, 430
(1976) (holding that prosecutors are absolutely immune from civil damages suits related to
conduct "intimately associated with the judicial phase of the criminal process."). With
regard to Plaintiff's claim for the return his property, Plaintiff may consider bringing a
motion for the return of his property in the state court where his criminal proceedings were
conducted. See People v. Lamonte, 53 Cal.App.4th 544, 549 (1997).


1 **IV. CONCLUSION**

2 For the reasons stated above,

3 IT IS HEREBY ORDERED THAT the instant action is DISMISSED without
4 prejudice. The Clerk shall close the file and terminate any pending matters.

5 IT IS SO ORDERED.

6 Dated: October 18, 2011

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8 SAUNDRA BROWN ARMSTRONG
9 United States District Judge
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1 FOR THE
2 NORTHERN DISTRICT OF CALIFORNIA

3 BARRIER et al,

4 Plaintiff,

5 v.

6 PRINCE et al,

7 Defendant.

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9 Case Number: CV11-02818 SBA

10 **CERTIFICATE OF SERVICE**

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
12 Court, Northern District of California.

13 That on October 20, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
15 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
16 located in the Clerk's office.

17 Paul Barrier
18 1001 Eighth Street
19 Novato, CA 94945

20 Dated: October 20, 2011

Richard W. Wieking, Clerk

21 By: LISA R CLARK, Deputy Clerk
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